

Managing the FSMC Contract Process

Sandra Kangas, Office Administrator
Sam Zeller, Program Specialist
Child & Adult Nutrition Services – DOE

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Disclaimer

- This is to explain the program requirements for the Local Education Agency (LEA).
- Reference to practices that need to be monitored are not necessarily a reflection on schools or companies currently operating or that have operated in the state. They are reflections of information gleaned at national and regional meetings.
- This information is provided based on USDA regulation, policy, and experience. We are not attorneys, and this is not to be construed as legal advice. You need to review all materials with your legal counsel.

Agenda

- What contracts are
- Resources
- Responsibilities
- Process
- Documentation
- Monitoring

FSMC or Vended Meals

- FSMC – Food Service Management Company
 - Prepares and serves meals
 - Provides management services
- Vended Meals
 - Provides meals only
- This only covers the FSMC process
 - Contract CANS for vended meal prototypes

Resources

Federal Law

- US Department of Ag
 - Regulations – Ag, NSLP, Procurement
 - Esp 7 CFR 210.16 and 2 CFR 200
 - Policies
 - Guidance – May 2016

Contracting with FSMC:
Guidance for SFAs

- State law
- Department of Legislative Audit
- CANS
 - Numbered Memos
 - Prototypes
 - Policies
- Other LEAs

Part 1: Contracting for FSMC

- Why contract?
- Timelines & Requirements
- Specifications
- FSMC and LEA Responsibilities
- Requests for Proposal (RFP)
- Contracts
- Prototype Documents
- Documentation
- Q&A

So You Want to Contract?

- **Fiscal impact**
 - Better or worse?
 - Richer or poorer?
- **Administrative impact**
 - Meal counts – you or them?
 - Monitoring the contract, services
- **Operational impact**

Why can't we just pick one?

- Free and open competition
- Solicit “bids” or proposals
 - Send to all on the list from CANS
 - Advertising by SD law and guidance
- Allow adequate time for a good response
- Pre-proposal meetings
- Proposal openings
- Analysis of proposals
- Selection

Timelines

- Plan ahead – don't wait for May 1!!
 - Identify the “why”
 - Conduct fiscal analysis
 - Resources and options
 - Board approval to proceed
 - Community input
 - Involve legal counsel
 - Writing specifications/RFP, CANS approval
 - Receiving proposals/bids, negotiation
 - CANS approval of contract, signatures
- Contract in place before work begins requiring payments out of nonprofit food service account

What FSMC Responsibilities

- On-site management
 - Meal preparation, service
 - Supervision/training of personnel
 - Ordering/Purchasing food and supplies
 - Ordering USDA Foods
 - Meet contract requirements
 - Meet regulations, policies
 - Participate in advisory meetings

LEA Retains Responsibilities

- Program accountability
- Retaining control of the:
 - quality of the food service and
 - prices charged to children;
- Monitoring the:
 - food service operations and
 - meal counting and claiming system;
- Reviewing the meal count data for each school under its jurisdiction before signing monthly claims for reimbursement;

LEA Retains Responsibilities (2)

- Retaining signature authority on the:
 - State agency/LEA agreement
 - Free and reduced-price policy statements, and
 - Claims for reimbursement
- Establishing an advisory board to assist in meal planning; and
- Obtaining/maintaining all applicable health certifications

Requirements

- Procurement procedures
- State and federal
 - laws
 - regulations
 - policies
- Ability to coordinate, monitor, review, control food service operation
- LEA must retain administrative responsibilities

Specifications

- Why are you contracting?
- Expectations
- Federal requirements - specific language
- Prototype
- Meals: pattern, types, times, 21 day cycle
- Nutrition education
- Quality
- Other
- Length of contract
- RFP & contract must be approved in writing by CANS

SOLICITATION

Required Components

- Scope of Work
- Cost Duration
- Cost Methodology
- Price Adjustment Factor
- Evaluation Criteria / Score Card

Solicitation – Scope of Work

LEA decision of Programs to be operated

- NSLP (lunch/afterschool snack)
- SBP (regular, in classroom, grab 'n go)
- SFSP/SSO (sites, length of time, meals)
- FFVP (what sites, how often, self or FSMC)
- CACFP (centers/homes, afterschool supper, non-school days, meals)
- Current vs Future – must specify to add in future
- Other considerations include new schools, mergers, adding/changing Programs or meals

Solicitation – Scope of Work (2)

- Will the FSMC provide procurement agent services?
 - Solicitation must specify this service and specify what this includes
 - When the FSMC provides these services, the FSMC must comply with all applicable Federal procurement requirements.
- What will be the FSMCs role regarding USDA Foods?
 - Solicitation must specify how USDA Foods will be:
 - Ordered, LEA or FSMC, within LEAs entitlement/allocation
 - Credited for value pass through method for the value of USDA Foods to the nonprofit food service account.
 - Identified on bills presented for payment
- What will be the FSMC's role in:
 - Counting, claiming, etc.

Solicitation – length of contract

- All solicitations/contracts must specify the contract's duration. Duration may be:
 - One year or less, with no provision for renewal.
 - One year, with an option for up to four (4) one-year renewals (7 CFR Part 210.16(d)).
 - The beginning date must not be prior to the date the contract is signed by both parties and approved by the State agency *prior to* contract execution.

Determine Type of Contract

- **Fixed Price**

- LEA pays the FSMC a standard rate (or rates) based on meal type
- Use meal equivalency formula for a la carte, catering, etc.

- **Cost-Reimbursable**

- LEA pays the bills for food, supplies, etc.
- Usually also has an administrative fee.

Solicitation – Fees

RFP Components: Fees

- A la carte (Fixed Price Contracts)
Meal Equivalency Factor
- Catering / Non- Program Foods
- Price Adjustments in Renewals based on
Consumer Price Index (CPI)

Solicitation – Price adjustments

A price adjustment clause is appropriate when:

- Contract may be extended for additional one year terms
- Market stability/conditions are uncertain;
- Adjustment standards or indices agreed to are based on contingencies outside the contractor's control; and
- Allowable adjustments to costs in a contract and must be tied to an appropriate standard or cost index.

Solicitation – Score Card

RFP Component:

- Evaluation Criteria Score Card
 - What's on there
 - Be sure evaluators know what the criteria mean

CONTRACT AWARD

- All Responses Received & Scored
- LEA board approves
- SA reviewed and approved
- SA approval must be in Writing prior to executing the contract!!!

Prototype RFP Document

- Revised prototype RFP document to be followed
- Specific area for LEA to insert additional information for the RFP
- Certain areas required narrative – usually no or minimal changes.
- Use your legal counsel!!
- SA must approve RFP prior to release
- Specific area for FSMC to insert additional information as part of response to the RFP
- RFP & response turns into the contract.

Contracts

- Responsibility of the LEA
- Reference the RFP and the proposal response
- Specific language is required – not just reference to proposal
- Length of contract
- Language from the contractor
- Renewals

Documentation

- The RFP
- Send notice to all FSMCs on list – keep copy of notice and who all it was sent to
- Keep copies of advertisement info
- Share any Q&A with all potential responders
- Keep all responses – (no and responses)
- Document meetings and decision
- Retain and submit copies to CANS
- Will be part of Administrative Review

Pitfalls to Avoid

DO

- Follow your written code of ethics
- Seek competition
- Be open to alternatives
- Allow adequate time
- Specify expectations
- Use prototypes from CANS
- Communicate
- Monitor

Pitfalls to Avoid

DO NOT

- Ask potential respondents to write the RFP
- Ask the chosen company to write contract
- Promise a contract beforehand
- Assume FSMCs are mind readers
- Accept any personal gain from consideration of or for entering into contract
- Believe you have no further responsibilities for the food service operation

Experience Speaks

- Concerns, successes, barriers in contracting process from those who have experience
- Questions?

Responsibility for Managing Contracts

Part 2: Managing FSMC Contracts

- Methods of review
- Monitoring Timelines
- Documentation
- Areas to monitor
- Timelines & requirements
- Renewing contracts
- Q&A

How can I tell if the Contractor is Meeting their Responsibilities?

- Observation/Monitoring
- Survey
- Comments
- Advisory Council Meetings
- Monitoring
- Inspections
- Review of records

Monitoring Timelines

- Someone at LEA must monitor
- Be knowledgeable of requirements and the contract
- At least twice annually
- Complete once before December 1, once near time to consider renewal
 - Recommend early in year for new contracts
- More often if problems are found

Documentation

- CANS has prototype, LEA can add to it
- Keep on file with other contract records
- Retention: “Three years beyond the current year” should cover the entire contract period and three years beyond the last year of the contract

Contract Monitoring – Why?

Assurance that:

- The contract terms are adhered to
- All program requirements are met
- Only allowable costs were paid from the nonprofit food service account

How do you know if....

- Meal patterns meet requirements?
- Company is carrying out responsibilities?
- A la carte sales are within requirements?
- Quality is as specified?
- Food safety plans are in place/implemented?
- Company is Buying American?
- Meal counts/a la carte sales are correct?
- Billing is correct?

Crediting Value of USDA Foods Fixed Price Contracts

Fixed Price Contracts

USDA Foods

Based on value of USDA Foods received

LEA monitors State agency report of allocations available

LEA ensures processed products are ordered and received to prevent processor inventory build-up and to ensure the product is received and value credited to the LEA

Purchased Foods - NONE

Discounts, Rebates and Credits are built into the fixed price established during solicitation phase

Crediting Value in Cost Reimbursable Contracts

USDA Foods

- same as fixed price

Rebates, discounts and credits

- Assure that discounts, rebates and credits are identified and returned to LEAs in invoices

Purchased Foods - If FSMC purchases, based on:

- Eligible products - obtain list from FSMC
- Volume purchases
 - obtain invoices to determine price charged and credits received
- Calculate the value of credits and proportion of credits to purchases to reconciliation value
- Reconcile value with amount credited by the FSMC

Contract Monitoring – credits

(cost reimbursable contracts)

Documentation of methodology to calculate credits:

- Price audits
- Total rebates owed to LEA in relation to amount received for all accounts
- Growth Incentive
- Conversion payments
- Frequency and method of calculating rebates
- Independent audit/third party unaffiliated accounting firm

Contract Monitoring – credits

(cost reimbursable contracts - 2)

- LEA should compare contract with invoices to assure:
- FSMC's actual frequency of reporting credits aligns with LEA-FSMC contract
- LEA is actually receiving rebates identified in contract

If LEAs cannot conduct appropriate oversight and monitoring of cost reimbursable contracts, use fixed price contracts.

Monitoring Meals

- Specified in contract
- Type
 - Breakfast, Lunch, Snack, Supper
- Programs (NSLP, SBP, FFVP, CACFP, SFSP, etc.)
- Meal Pattern, Nutrients, Special diets
- Offer vs. Serve implemented correctly
- Time
- Follow 21-day menu cycle, change as allowed
- FFVP differences

Monitoring Food Safety Plans

- Required for all meal preparation and service sites
- Ensure food safety
- Logs of activity
- Training and monitoring
- Post inspection results/keep copy

Monitoring A la Carte Sales & Other

- Define a la carte, extra sales in contract process (meal equivalency factor).
- School Wellness Policy & updates
- Smart Snacks
- Catering / Use of kitchen for other preparation (other LEAs, child care, senior meals, etc.)
- Professional Standards
- Food Revenue Requirements
- Civil Rights

Monitoring Quality

- What is “quality”?
- Specify food quality in RFP/contract process (check on it!)
- Require the company participate in the advisory board meetings
- Require the company provide documentation to you to demonstrate quality of foods, recipes, etc.
- Quality of staffing – are they personable?

Monitoring Meal Counts, if FSMC does this

- LEA or contractor responsibility defined in contract
- Avoid inflated counts
- Eligible meals/ineligible meals
- Meals served only, not those delivered
- Adult/guest meals
- Records & retention

Billing

- Do meal billings match reported meal counts?
- Are USDA Foods credited on the billing as required in contract (full USDA value for all USDA Foods received for that month)?
- Are extra fees tacked on?
- Are per meal equivalency factors correct?
- Credits for other kitchen usage, if LEA allows this

Experience Speaks

- Concerns, successes, barriers
- Questions?
- Contact CANS with questions.

Contract Renewal

Adjustments
Dates

Monitoring
Approval

Renewing Contracts

- Contracts are for one-year period
- If the RFP and contract specify it, can be renewed annually up to four times
- Are there material changes to the contract? If yes, rebid.
- Not required to renew or accept renewal.
- If no renewal, start contract process over
- Did you receive your guaranteed return?

Renewing Contracts

- First step— does the LEA want to offer renewal?
 - Yes – offer renewal
 - No – return to self op or rebid
- Second step – will the FSMC agree to renew at current price plus allowable increase.
 - Yes – proceed with renewal
 - No - LEA will rebid or return to self-op.
- Renewal prototype
- SA Approval of Renewal

Contract Renewal

Contract renewal is permitted, *not* required or automatic

- Renewal options are one year at a time
- Subject to the same terms and conditions as established in the original solicitation and contract
 - Require State agency approval prior to execution
- Amendments, if requested, must be considered to determine if they materially change a contract



- Require LEA documentation if a change is material
 - Change exceeds the value of the small purchase threshold. If a material change exists, a new solicitation must be published

Contract Renewal

What CPI is in the RFP

- Recommended Consumer Price Index (CPI):
- Food Eaten Away from home, All Urban Consumers
- Compare July to June (or other “same period” comparison) unadjusted indexes.
- Find on the web at <http://www.bls.gov/cpi/>

Sample CPI index

Table A. Percent changes in CPI for All Urban Consumers (CPI-U): U.S. city average

| | Seasonally adjusted changes from preceding month | | | | | | | Un-adjusted 12-mos. ended Dec. 2015 |
|--|--|--------------|--------------|--------------|--------------|--------------|--------------|--|
| | June 2015 | July 2015 | Aug. 2015 | Sep. 2015 | Oct. 2015 | Nov. 2015 | Dec. 2015 | |
| All Items | .3 | .1 | -.1 | -.2 | .2 | .0 | -.1 | .7 |
| Food | .3 | .2 | .2 | .4 | .1 | -.1 | -.2 | .8 |
| Food at home | .4 | .3 | .3 | .3 | .1 | -.3 | -.5 | -.4 |
| Food away from home ¹ | .2 | .0 | .2 | .5 | .2 | .2 | .1 | 2.6 |

Contract Renewal

Some Considerations Include:

- Quality of meals served by the FSMC;
- FSMC's effect on LEA finances; and
- FSMC's overall responsiveness and conformance to the contract's requirements as determined by:
 - Contract performance management/administration documentation
 - Participation trends
 - Return of discounts, rebates, and credits to the nonprofit food service account
 - USDA Foods (fixed price and cost reimbursable contracts)
 - Commercially Purchased Foods (cost reimbursable contracts)

Contract Renewal

- **Material Change?**
- **Existing Scope**
 - LEA: 10 schools – 8 - K-5; 2 - 6-8; 1 - 9-12
 - NSLP meal/meal equivalents projected: 9,000 /day
 - NSLP projected revenue total: \$4,300,000
- **Proposed Amendment:**
 - Add SBP (all schools) and Afterschool snack (8 K-5 schools)
 - Projected SBP meals: 3,000/day- \$840,000 total
 - Projected Afterschool snacks: 800/day - \$144,000 total

Contract Renewal

Meal Equivalents:

- Projected SBP meals: 3,000/day
- SBP Meal Equivalents to Lunch = 2/1
- SBP: $3,000 / 2 = 1,500$
- Snack Meal Equivalents to Lunch – 3/1
- Snack: $800/3 = 266$
- NSLP+SBP+snacks = $9,000+1,500+266 = 10,766$
- This change is 13.9 percent of the contract
- What other contracts will be affected?

Contract Renewal

Examples of changes that often are material

- Scope of Work
 - Number of schools/districts consolidate
 - Adding programs not indentified in the original solicitation
 - School goes from only NSLP to NSLP/SBP/FFVP/SFSP/CACFP, etc
- Changes to the formula to determine meal equivalents
- A major shift in the responsibilities of the LEA or FSMC staff; and
- Significant changes in the basis for determining guaranteed returns.

Experience Speaks

- Concerns, successes, barriers
- Questions?
- Contact CANS with questions.

THANKS for your time.

- Involve folks at the LEA.
- **Use your attorney.**
- Talk to other LEAs that have gone through this process.
- Contact CANS office when there are questions.